

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM HARRISON ALSTON,
Plaintiff,

vs.

DEBRA FORSYTH, et al.,
Defendants.

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C.A. No. 05-168 Erie
District Judge McLaughlin
Magistrate Judge Baxter

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I RECOMMENDATION

_____It is respectfully recommended that the instant civil rights action be dismissed for plaintiff’s failure to prosecute.

II REPORT

Plaintiff William Harrison Alston, an inmate at the Federal Correctional Institution at Petersburg, Virginia, filed this civil rights action on May 27, 2005, along with a motion to proceed *in forma pauperis*. By Order dated June 29, 2005, District Judge Sean J. McLaughlin adopted this Court’s Report and Recommendation denying Plaintiff’s *in forma pauperis* request and requiring Plaintiff to pay the filing fee of \$250.00 on or before July 15, 2005 or suffer dismissal of this case for failure to prosecute. Nevertheless, Plaintiff has since failed to pay the filing fee, or any part thereof.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider:

1) the extent of the party’s personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of

sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. Since the filing of this matter, Plaintiff has taken none of the necessary first steps to prosecute this case. Further, Plaintiff has failed to comply with an order of this Court. Plaintiff is proceeding *pro se* and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although Plaintiff's allegations may state a claim upon which relief could be ultimately be granted, the merits of the claim are impossible to determine at this early stage of the proceedings.

III CONCLUSION

For the foregoing reasons, it is respectfully recommended that this case be dismissed due to Plaintiff's failure to prosecute.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. No extensions of time will be granted. Failure to timely file objections may constitute a waiver of any appellate rights.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge

Dated: July 25, 2005

cc: The Honorable Sean J. McLaughlin
United States District Judge